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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 398

TREASURE COMPANY, A CORPORATION, AND SAMARKAND OIL COMPANY, A CORPORATION, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The district court did not write an opinion. The opinion of the court of appeals (R. 289–297) is reported in 169 F. 2d 437.

JURISDICTION

The judgment of the court of appeals was entered on August 6, 1948 (R. 297). Petition for rehearing was denied September 10, 1948 (R. 298). The petition for a writ of certiorari was filed November 4, 1948. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

QUESTION PRESENTED

Whether a federal district court, having acquired jurisdiction over property by the institution of condemnation proceedings by the United States, has power to enjoin temporarily the prosecution of actions subsequently brought in a state court to recover such property or damages for its withholding.

STATUTES INVOLVED

Section 262 of the Judicial Code, 28 U. S. C. 377, now 28 U. S. C. 1651, so far as material, provided:

> * * * The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law.

Section 265 of the Judicial Code, 28 U. S. C. 379, now 28 U. S. C. 2283, provided:

> The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.

STATEMENT

Petitioners seek to review a judgment which affirmed an order refusing to set aside an interlocutory injunction which, pending determination

of a condemnation proceeding instituted by the United States, restrains petitioners from proceeding further in two actions brought by them in the Superior Court of Los Angeles County, California, against the Union Oil Company to recover certain property or damages for its withholding.

The material facts are as follows:

On September 19, 1942, the Reconstruction Finance Corporation, at the request of its subsidiary, the Defense Plant Corporation, requested the Attorney General to institute proceedings to condemn described lands for use as a storage reservoir for natural gas (R. 77–80). On September 28, 1942, the United States filed a complaint to condemn fee simple title and a declaration of taking, and obtained an order directing immediate delivery of possession (R. 2–19). The Defense Plant Corporation took possession and employed Union Oil Company to maintain and operate the property (R. 67, 243–244). Later (a question having been raised as to whether certain oil-well equipment was included in the complaint) the Reconstruction Finance Corporation amended the request of September 18, 1942, enumerating and expressly including such equipment. Accordingly, an amended complaint in condemnation was filed on January 12, 1944 (R. 37–46).

In April and May 1945, petitioners filed answers to the complaint in condemnation which alleged that their personal property was unlawfully taken by the United States, Reconstruction Finance

Corporation and Defense Plant Corporation and their agents and prayed that the action be dismissed or, alternatively, that specified amounts be awarded for the taking of petitioners' real and personal property (R. 47–48, 49–51). Subsequently, on September 27, 1945, each petitioner filed a suit against Union Oil Company to recover possession of alleged personal property located on the lands condemned or its value and damages for its withholding (R. 71). On March 26, 1946, the Government filed, in the condemnation proceedings, a petition for an injunction restraining prosecution of these suits (R. 66–76). After answer and hearing (R. 121–151, 197–266), the court on January 27, 1947, granted the injunction (R. 171–175).[1] On May 22, 1947, this decree was amended upon motion of petitioners so as to state specifically that it was a temporary and not a permanent injunction.

On May 28, 1947, petitioners served notice of motion for an order vacating the injunction (R.

[1] Each petitioner also brought an action to recover the value of oil alleged to have been wrongfully extracted by the Union Oil Company (see R. 72–73). Restraint of the prosecution of these actions was also asked (R. 76). At the hearing which resulted in issuance of the restraining order, counsel for petitioners agreed that these oil cases related to real property and so would not be tried until determination of the condemnation proceeding (R. 261–262). Because of this agreement, the restraining order did not embrace these actions (R. 173). Also, the Government had previously sought to enjoin the prosecution of two other state court actions, but the injunction was denied because those actions had been filed prior to amendment of the complaint in condemnation (R. 52–63).

179–182). On August 4, 1947, the court refused to vacate the injunction and on appeal the court below affirmed, holding that the district court had not abused its discretion in denying the motion to vacate (R. 289–297).

ARGUMENT

1. Petitioners contend that the district court lacked jurisdiction to enjoin temporarily the prosecution of the suits in the state courts because of the provisions of section 265 of the Judicial Code, *supra*, p. 2. However, petitioners recognize (Pet. pp. 26–31) that section 265 does not prevent the issuance of injunctions to protect the jurisdiction acquired in proceedings which are *in rem* or *quasi in rem*. Petitioners also recognize the fact that condemnation proceedings are *in rem* and that here the federal district court acquired jurisdiction of the *res* prior to institution of the state court proceedings (Pet. 21–22). Nevertheless, petitioners argue that the trial court had no jurisdiction to enjoin prosecution of the state court actions because only money judgments could be rendered in those actions (Pet. 26). Thus, no question of general importance as to interpretation of section 265 is presented, nor do petitioners assert any conflict of decisions. The sole question presented is simply one of determining the nature of the state court actions.

The court below described both state court proceedings as actions by each petitioner "to recover possession of a part of the personal prop-

erty claimed by it or the value thereof" (R. 291). Petitioners themselves, in their motion for an order dissolving the injunction, described the proceedings as actions "which were commenced for the purpose of recovering possession of certain personal property * * * or the value thereof" (R. 180). Obviously, insofar as the suits seek recovery of possession of specific property, they are *in rem*. *Frost* v. *Witter*, 132 Cal. 421, 426. Petitioners now contend (Pet. 23–25) that there would be no interference with jurisdiction of the federal court because the state court would deny them the specific relief for which they prayed. But the nature of the actions is to be determined by reference to the relief sought. *Princess Lida* v. *Thompson*, 305 U. S. 456, 465, 466. Clearly, the state court actions instituted by petitioners were proceedings *in rem* or *quasi in rem* (see R. 56–57), and their nature cannot be changed by assuming that the state court will deny the relief petitioners asked for.[2]

Section 265 of the Judicial Code is inapplicable in the instant case for the additional reason that it is a statute of general import not naming the United States and, hence, does not apply to the sovereign. *United States* v. *Mine Workers*, 330 U. S. 258, 270; *United States* v. *Amer. Bell Telephone Co.*, 159 U. S. 548, 554; *United States* v.

[2] The California courts have stated that a proceeding of this kind is "a possessory action." *People's Sav. Bank of Fresno* v. *Jones*, 114 Cal. 422; *John A. Dunn Co.* v. *C. F. Weber & Co.*, 122 Cal. App. 45.

Dewar, 18 F. Supp. 981, 983 (Nev.); see also R. 296, f. n. 17.

2. Petitioners assert that the seizure of the personal property on September 28, 1942, was illegal and that damages for such seizure can be recovered only in the state court actions (Pet. pp. 7, 18–21, 31, 33). It is the Government's position that there was an authorized taking of this property for war purposes and that the property is embraced in this condemnation proceeding for two reasons. First, because the so-called personal property constitutes equipment affixed to a producing oil well which is part of the real estate and was therefore included within the term "real property" as used in the original complaint. See *Big Sespe Oil Co.* v. *Cochran,* 276 Fed. 216 (C. C. A. 9); *Cortelyou* v. *Baker,* 182 Cal. 168; *United States* v. *Becktold Company,* 129 F. 2d 473 (C. C. A. 8). Second, there having been an authorized taking, the amendment of the complaint in January 1944 could properly relate back to September 28, 1942. See *United States* v. *Rogers,* 255 U. S. 163; *Bank of Edenton* v. *United States,* 152 F. 2d 251 (C. C. A. 4).[3] These questions were raised but not decided in *United States* v. *Block,* 160 F. 2d 604 (C. C. A. 9), involving another parcel in this

[3] Petitioners' argument to the contrary is apparently rested on the view that the federal power of eminent domain may be exercised only by means of condemnation proceedings. See Pet. pp. 10, 19. Since the federal power is not so limited but may be exercised by a physical taking giving rise to a claim under the Tucker Act, the argument falls.

same condemnation proceeding. Petitioners' apparent assumption (Pet. 20) that these questions have been decided in the instant case is erroneous. On the contrary, the court below pointed out that whether the property was wrongfully taken on September 28, 1942, "will be determined in the condemnation proceeding" (R. 293). If the Government's contentions prevail, petitioners will receive all the compensation to which they are entitled in the condemnation proceeding. The state court actions become important only if those contentions are rejected and, in that event, the temporary injunction will be dissolved. Postponement of the trial of the state court actions pending such determination is obviously desirable and does not, as petitioners assert (pp. 32–33), constitute an abuse of discretion.

CONCLUSION

The decision of the court below is clearly correct, and there is no conflict of decisions. The case presents no question which warrants review by this Court. It is respectfully submitted, therefore, that the petition for a writ of certiorari should be denied.

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